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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/902,972	07/11/2001	Atsushi Suzuki	10873.756US01	9740

7590 08/12/2003

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[REDACTED] EXAMINER

QUARTERMAN, KEVIN J

ART UNIT	PAPER NUMBER
	2879

DATE MAILED: 08/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/902,972	SUZUKI ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Kevin Quarterman	2879

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 22 May 2003.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) 6-9 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-5 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |   |  |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>10</u> . | 6) <input type="checkbox"/> Other: _____ .                                   |

## DETAILED ACTION

### ***Response to Amendment***

1. Applicant's Amendment B, filed 22 May 03, has been entered and overcomes the objections and rejections under 35 USC § 112.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or  
(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

3. Claims 1-5 are rejected under 35 U.S.C. 102(e) as being anticipated by Hosotani (US 6114803).

4. Regarding independent claim 1, Figure 5 of Hosotani shows a cathode ray tube comprising a panel (1) provided with a colored layer (33) on an outer surface of a face portion.

5. The Examiner notes that the functional recitation that "a ratio of an emission luminance in a part that exhibits the lowest emission luminance to an emission luminance in a part that exhibits the highest luminance is not less than 75% and a ratio of a diffuse reflectance in a part that exhibits the lowest diffuse reflectance to a diffuse reflectance in a part that exhibits the highest diffuse reflectance is not less than 90%"

has not been given patentable weight because it is narrative in form. In order to be patentable weight, a functional recitation must be expressed as a "means" for performing the specified function, as set forth in 35 USC § 112, 6<sup>th</sup> paragraph, and must be supported by recitation in the claim of sufficient structure to warrant presence of the functional language.

6. Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. Apparatus claims cover what a device *is*, not what a device *does* (See MPEP § 2114).

7. Regarding claim 2, the functional recitation that "a light transmittance of the colored layer in a periphery of the face portion is the same as or larger than a light transmittance in a center" has not been given patentable weight for the same reasons discussed earlier for independent claim 1.

8. Regarding claim 3, Figure 5 of Hosotani shows a substantially flat outer surface of the face portion and a curved inner surface of the face portion. The functional recitation that "a light transmittance ratio of the colored layer is 100 to 120% in a peripheral portion on a minor axis of the face portion relative to a center" has not been given patentable weight for the same reasons discussed earlier with respect to independent claim 1.

9. Regarding claims 4-5, Figure 5 of Hosotani shows a boundary line (edge of the panel) having an approximate Ω-letterform protruding from the center of the face portion toward the periphery of the face portion.

***R sponse to Arguments***

10. Applicant's arguments filed 22 May 2003 have been fully considered but they are not persuasive.

11. In response to applicant's argument that the luminance and reflectance features of independent claim 1 are physical properties of the panel, the Examiner disagrees. The luminance and reflectance features simply describe how light is emitted or reflected by the panel, which the Examiner considers to be functional characteristics.

12. There being no structural difference between the structure cited in independent claim 1 and the structure taught by Hosotani, the Examiner notes that something which is old does not become patentable upon the discovery of a new property (See MPEP § 2112).

***Conclusion***

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

14. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Quarterman whose telephone number is (703) 308-6546. The examiner can normally be reached on M-F (8-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nimesh Patel can be reached on (703) 305-4794. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7382 for regular communications and (703) 308-7382 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

Kevin Quarterman  
Examiner  
Art Unit 2879

kq/  
August 6, 2003

*Nimesh Patel*  
for Nimesh Patel  
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